

RIGHT TO KNOW ADVISORY COMMITTEE

LEGISLATIVE SUBCOMMITTEE MEETING

DRAFT AGENDA

November 24, 2010

12:00 noon

Room 438, State House

Welcome and introductions

I Pending issue

Revised draft legislation: protection of private information contained in e-mail and other forms of communication that are sent and received by public officials, particularly communications between elected public officials and their constituents (confidential exceptions in public records)

II Other business?

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Right to Know Advisory Committee
Legislative Subcommittee
DRAFT: Confidential communications

Sec. 1. 1 MRSA §402, sub-§3, ¶C-1 is enacted to read:

(The following are not public records:)

C-1. Information contained in a communication between a constituent and an elected official if the information:

(1) Is of a personal nature, consisting of:

(a) An individual's medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;

(b) Credit and financial information;

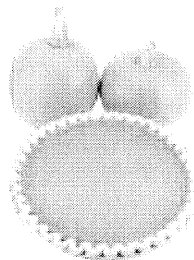
(c) Information pertaining to the personal history, general character or conduct of the person or any member of the person's immediate family;

(d) Complaints, charges of misconduct, replies to complaints and charges of misconduct and memoranda and other materials pertaining to disciplinary action; or

(e) An individual's Social Security number; or

(2) Would be confidential if it were in the possession of another public agency or official.

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Right to Know Advisory Committee
Legislative Subcommittee
DRAFT: Confidential communications

Sec. 1. 1 MRSA §402, sub-§3, ¶C-1 is enacted to read:

(The following are not public records:)

C-1. Information contained in a communication between a constituent and an elected official if the information:

- (1) Is excepted from the definition of public record in this subsection;
- (2) Is designated as confidential by statute; or
- (3) Is of a personal nature, consisting of:
 - (a) An individual's medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;
 - (b) Credit and financial information;
 - (c) The personal history, general character or conduct of the person or any member of the person's immediate family;
 - (d) Complaints, charges of misconduct, replies to complaints and charges of misconduct and memoranda and other materials pertaining to disciplinary action; or
 - (e) An individual's Social Security number.

THE PRIVACY ACT OF 1974**5 U.S.C. § 552a**

As Amended

§ 552a. Records maintained on individuals

(a) Definitions

For purposes of this section--

- (1) the term "agency" means agency as defined in section 552(f) of this title;
- (2) the term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;
- (3) the term "maintain" includes maintain, collect, use or disseminate;
- (4) the term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;
- (5) the term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;
- (6) the term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of Title 13;
- (7) the term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected;
- (8) the term "matching program"--
 - (A) means any computerized comparison of--
 - (i) two or more automated systems of records or a system of records with non-Federal records for the purpose of--
 - (I) establishing or verifying the eligibility of, or

5 §7070. PERSONNEL RECORDS

5 §7070. PERSONNEL RECORDS

Every appointment, transfer, promotion, demotion, dismissal, vacancy, change of salary rate, leave of absence, absence from duty and other temporary or permanent change in status of employees in both the classified service and the unclassified service of the Executive and Legislative Departments shall be reported to the director at such time, in such form and together with such supportive or pertinent information as he shall by rule prescribe. [1985, c. 785, Pt. B, §38 (NEW).]

The director shall maintain a perpetual roster of all officers and employees in the classified and unclassified services, showing for each person such data that the director considers pertinent. [2007, c. 466, Pt. A, §21 (AMD).]

Records of the Bureau of Human Resources shall be public records and open to inspection of the public during regular office hours at reasonable times and in accordance with the procedure as the director may provide. [1985, c. 785, Pt. B, §38 (NEW).]

The following records shall be confidential and not open to public inspection, and shall not be "public records," as defined in Title 1, section 402, subsection 3: [1985, c. 785, Pt. B, §38 (NEW).]

1. Papers relating to applications, examinations or evaluations of applicants. Except as provided in this subsection, applications, resumes, letters and notes of reference, working papers, research materials, records, examinations and any other documents or records and the information they contain, solicited or prepared either by the applicant or the State for use in the examination or evaluation of applicants for positions as state employees.

A. Notwithstanding any confidentiality provision other than this subsection, applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired, except that personal contact information is not a public record as provided in Title 1, section 402, subsection 3, paragraph O. [2007, c. 597, §5 (AMD).]

B. Telephone numbers are not public records if they are designated as "unlisted" or "unpublished" in an application, resume or letter or note of reference. [1989, c. 402, §1 (NEW).]

C. This subsection does not preclude union representatives from access to personnel records, consistent with subsection 4, which may be necessary for the bargaining agent to carry out its collective bargaining responsibilities. Any records available to union representatives which are otherwise covered by this subsection shall remain confidential and are not open to public inspection; [1989, c. 402, §1 (NEW).]

[2007, c. 597, §5 (AMD) .]

2. Personal information. Records containing the following, except they may be examined by the employee to whom they relate when the examination is permitted or required by law:

A. Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders; [1985, c. 785, Pt. B, §38 (NEW).]

B. Performance evaluations and personal references submitted in confidence; [1985, c. 785, Pt. B, §38 (NEW).]

C. Information pertaining to the credit worthiness of a named employee; [1985, c. 785, Pt. B, §38 (NEW).]

D. Information pertaining to the personal history, general character or conduct of members of the employee's immediate family; [1997, c. 124, §2 (AMD).]

D-1. Personal information pertaining to the employee's race, color, religion, sex, national origin, ancestry, age, physical disability, mental disability and marital status; social security number; personal contact information as provided in Title 1, section 402, subsection 3, paragraph O; and personal employment choices pertaining to elected payroll deductions, deferred compensation, savings plans, pension plans, health insurance and life insurance. When there is a work requirement for public access to personal information under this paragraph that is not otherwise protected by law, that information may be made public. The Director of the Bureau of Human Resources, upon the request of the employing agency, shall make the determination that the release of certain personal information not otherwise protected by law is allowed; and [2007, c. 597, §6 (AMD) .]

E. Except as provided in section 7070-A, complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public.

For purposes of this paragraph, "final written decision" means:

- (1) The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or
- (2) If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days; [1997, c. 770, §1 (AMD) .]

This subsection does not preclude union representatives from having access to personnel records, consistent with subsection 4, that may be necessary for the bargaining agent to carry out its collective bargaining responsibilities. Any records available to union representatives that are otherwise covered by this subsection remain confidential and are not open for public inspection;

[2007, c. 597, §6 (AMD) .]

3. Other information. Other information to which access by the general public is prohibited by law.

[1985, c. 785, Pt. B, §38 (NEW) .]

4. Disclosure of certain information for grievance and other proceedings. The Director of Human Resources may release specific information designated confidential by this section to be used in negotiations, mediation, fact-finding, arbitration, grievance proceedings and other proceedings in which the State is a party. For the purpose of this subsection, "other proceedings" means unemployment compensation proceedings, workers' compensation proceedings, human rights proceedings and labor relations proceedings.

Confidential information provided under this subsection shall be governed by the following.

- A. The information to be released shall be information only as necessary and directly related to the proceeding as determined by the Director of Human Resources. [1987, c. 673, §1 (NEW) .]
- B. [2007, c. 240, Pt. HH, §12 (RP) .]

C. The proceeding for which the confidential information is provided shall be private and not open to the public; or, if the proceeding is open to the public, the confidential information shall not be disclosed except exclusively in the presence of the fact finder, the parties and counsel of record, and the employee who is the subject of the proceeding and provisions are made to ensure that there is no public access to the confidential information. [1987, c. 673, §1 (NEW).]

The State may use this confidential information in proceedings and provide copies to the employee organization that is a party to the proceedings, provided the information is directly related to those proceedings as defined by the applicable collective bargaining agreement. Confidential personnel records in the possession of the Bureau of Human Resources may not be open to public inspection and may not be "public records," as defined in Title 1, section 402, subsection 3.

[2007, c. 240, Pt. HH, §12 (AMD) .]

SECTION HISTORY

1985, c. 785, §B38 (NEW). 1987, c. 673, §1 (AMD). 1989, c. 402, §1 (AMD). 1991, c. 229, §1 (AMD). 1991, c. 729, §1 (AMD). 1997, c. 124, §2 (AMD). 1997, c. 770, §1 (AMD). 2007, c. 240, Pt. HH, §12 (AMD). 2007, c. 466, Pt. A, §21 (AMD). 2007, c. 597, §§5, 6 (AMD).

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20-A §6101. RECORD OF DIRECTORY INFORMATION

20-A §6101. RECORD OF DIRECTORY INFORMATION

The following provisions apply to employee records. [1981, c. 693, §§5, 8 (NEW) .]

1. Contents. A school administrative unit shall maintain a record of directory information on each employee as follows:

- A. Name; [1981, c. 693, §§5, 8 (NEW) .]
- B. Dates of employment; [1981, c. 693, §§5, 8 (NEW) .]
- C. Regular and extracurricular duties, including all courses taught in that school administrative unit; [1981, c. 693, §§5, 8 (NEW) .]
- D. Post-secondary educational institutions attended; [1981, c. 693, §§5, 8 (NEW) .]
- E. Major and minor fields of study recognized by the post-secondary institutions attended; and [1997, c. 452, §1 (AMD) .]
- F. Degrees received and dates awarded. [1997, c. 452, §1 (AMD) .]
- G. [1997, c. 452, §2 (RP) .]

[1997, c. 452, §§1, 2 (AMD) .]

2. Access. The following provisions apply to access of employee records.

A. The record of directory information shall be available for inspection and copying by any person. [1981, c. 693, §§5, 8 (NEW) .]

B. Except as provided in paragraph A, information in any form relating to an employee or applicant for employment, or to the employee's immediate family, must be kept confidential if it relates to the following:

- (1) All information, working papers and examinations used in the examination or evaluation of all applicants for employment;
- (2) Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;
- (3) Performance evaluations, personal references and other reports and evaluations reflecting on the quality or adequacy of the employee's work or general character compiled and maintained for employment purposes;
- (4) Credit information;
- (5) Except as provided by subsection 1, the personal history, general character or conduct of the employee or any member of the employee's immediate family;
- (6) Complaints, charges of misconduct, replies to complaints and charges of misconduct and memoranda and other materials pertaining to disciplinary action;
- (7) Social security number;
- (8) The teacher action plan and support system documents and reports maintained for certification purposes; and
- (9) Criminal history record information obtained pursuant to section 6103. [1995, c. 547, §4 (AMD) .]

C. Any written record of a decision involving disciplinary action taken with respect to an employee by the governing body of the school administrative unit shall not be included within any category of confidential information set forth in paragraph B. [1981, c. 693, §§5, 8 (NEW).]

[1995, c. 547, §4 (AMD) .]

3. Commissioner's review. The commissioner shall have access to any of the records or documents designated as confidential in this section for carrying out the commissioner's duties pursuant to section 13020. Copies of any such records or documents shall simultaneously be provided to the employee.

The commissioner shall also have access to support system documents for carrying out the commissioner's certification and support system approval duties pursuant to chapter 502 and to other confidential employee records for carrying out the commissioner's school approval duties pursuant to chapter 206.

[1987, c. 620, §2 (AMD) .]

SECTION HISTORY

1981, c. 693, §§5,8 (NEW). 1983, c. 470, §5 (AMD). 1983, c. 806, §60 (AMD). 1983, c. 862, §58 (AMD). 1985, c. 506, §A37 (AMD). 1987, c. 620, §§1,2 (AMD). 1995, c. 547, §§2-4 (AMD). 1997, c. 452, §§1,2 (AMD).

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30-A §503. PERSONNEL RECORDS

30-A §503. PERSONNEL RECORDS

1. Confidential records. The following records are confidential and not open to public inspection. They are not "public records" as defined in Title 1, section 402, subsection 3. These records include:

A. Except as provided in this paragraph, applications, resumes, letters and notes of reference, working papers, research materials, records, examinations and any other documents or records and the information they contain, solicited or prepared either by the applicant or the county for use in the examination or evaluation of applicants for positions as county employees.

(1) Notwithstanding any confidentiality provision other than this paragraph, applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired.

(2) Telephone numbers are not public records if they are designated as "unlisted" or "unpublished" in an application, resume or letter or note of reference.

(3) This paragraph does not preclude union representatives from access to personnel records which may be necessary for the bargaining agent to carry out its collective bargaining responsibilities. Any records available to union representatives which are otherwise covered by this subsection shall remain confidential and are not open to public inspection; [1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD); 1989, c. 402, §2 (RPR).]

B. County records containing the following:

(1) Medical information of any kind, including information pertaining to the diagnosis or treatment of mental or emotional disorders;

(2) Performance evaluations and personal references submitted in confidence;

(3) Information pertaining to the creditworthiness of a named employee;

(4) Information pertaining to the personal history, general character or conduct of members of an employee's immediate family; and

(5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public.

For purposes of this subparagraph, "final written decision" means:

(a) The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or

(b) If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days; and [1997, c. 770, §2 (AMD).]

C. Other information to which access by the general public is prohibited by law. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

[1997, c. 770, §2 (AMD) .]

1-A. Investigations of deadly force or physical force by law enforcement officer. The name of a law enforcement officer is not confidential under subsection 1, paragraph B, subparagraph (5) in cases involving:

A. The use of deadly force by a law enforcement officer; or [1991, c. 729, §6 (NEW) .]

B. The use of physical force by a law enforcement officer resulting in death or serious bodily injury. [1991, c. 729, §6 (NEW) .]

In cases specified in paragraphs A and B, regardless of whether disciplinary action is taken, the findings of any investigation into the officer's conduct are no longer confidential when the investigation is completed and a decision on whether to bring criminal charges has been made, except that if criminal charges are brought, the findings of the investigation remain confidential until the conclusion of the criminal case.

[1991, c. 729, §6 (NEW) .]

2. Employee right to review. On written request from an employee or former employee, a county official with custody of the records shall provide that employee, former employee or the employee's authorized representative with an opportunity to review the employee's personnel file, if the county official has a personnel file for that employee. These reviews shall take place during normal office hours at the location where the personnel files are maintained.

A. For the purposes of this subsection, a personnel file includes, but is not limited to, any formal or informal employee evaluations and reports relating to the employee's character, credit, work habits, compensation and benefits of which the county official has possession. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

B. The records described in subsection 1, paragraph B, may also be examined by the employee to whom they relate, as provided in this subsection. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

SECTION HISTORY

1987, c. 737, §§A2,C106 (NEW). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,10 (AMD). 1989, c. 402, §2 (AMD). 1991, c. 229, §2 (AMD). 1991, c. 729, §6 (AMD). 1997, c. 770, §2 (AMD) .

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30-A §2702. PERSONNEL RECORDS

30-A §2702. PERSONNEL RECORDS

1. Confidential records. The following records are confidential and not open to public inspection. They are not "public records" as defined in Title 1, section 402, subsection 3. These records include:

A. Except as provided in this paragraph, applications, resumes, letters and notes of reference, working papers, research materials, records, examinations and any other documents or records and the information they contain, solicited or prepared either by the applicant or the municipality for use in the examination or evaluation of applicants for positions as municipal employees.

(1) Notwithstanding any confidentiality provision other than this paragraph, applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired.

(2) Telephone numbers are not public records if they are designated as "unlisted" or "unpublished" in an application, resume or letter or note of reference.

(3) This paragraph does not preclude union representatives from access to personnel records which may be necessary for the bargaining agent to carry out its collective bargaining responsibilities. Any records available to union representatives which are otherwise covered by this subsection shall remain confidential and are not open to public inspection; [1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD); 1989, c. 402, §3 (RPR).]

B. Municipal records pertaining to an identifiable employee and containing the following:

(1) Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;

(2) Performance evaluations and personal references submitted in confidence;

(3) Information pertaining to the creditworthiness of a named employee;

(4) Information pertaining to the personal history, general character or conduct of members of an employee's immediate family; and

(5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. The decision must state the conduct or other facts on the basis of which disciplinary action is being imposed and the conclusions of the acting authority as to the reasons for that action. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public.

For purposes of this subparagraph, "final written decision" means:

(a) The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or

(b) If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days; and [1997, c. 770, §3 (AMD).]

C. Other information to which access by the general public is prohibited by law. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

[1997, c. 770, §3 (AMD) .]

1-A. Investigations of deadly force or physical force by law enforcement officer. The name of a law enforcement officer is not confidential under subsection 1, paragraph B, subparagraph (5) in cases involving:

A. The use of deadly force by a law enforcement officer; or [1991, c. 729, §7 (NEW) .]

B. The use of physical force by a law enforcement officer resulting in death or serious bodily injury. [1991, c. 729, §7 (NEW) .]

In cases specified in paragraphs A and B, regardless of whether disciplinary action is taken, the findings of any investigation into the officer's conduct are no longer confidential when the investigation is completed and a decision on whether to bring criminal charges has been made, except that if criminal charges are brought, the findings of the investigation remain confidential until the conclusion of the criminal case.

[1991, c. 729, §7 (NEW) .]

2. Employee right to review. On written request from an employee or former employee, the municipal official with custody of the records shall provide the employee, former employee or the employee's authorized representative with an opportunity to review the employee's personnel file, if the municipal official has a personnel file for that employee. These reviews shall take place during normal office hours at the location where the personnel files are maintained. For the purposes of this subsection, a personnel file includes, but is not limited to, any formal or informal employee evaluations and reports relating to the employee's character, credit, work habits, compensation and benefits which the municipal official may possess. The records described in subsection 1, paragraph B, may also be examined by the employee to whom they relate, as provided in this subsection.

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

SECTION HISTORY

1987, c. 737, §§A2,C106 (NEW). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,10 (AMD). 1989, c. 402, §3 (AMD). 1991, c. 229, §3 (AMD). 1991, c. 729, §7 (AMD). 1997, c. 770, §3 (AMD).

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